IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

APPEAL NO.833 OF 2004
IN
ARBITRATION PETITION NO.300 OF 2004

Mr.Kauntey Tanna ..Appellant.
(Orig.Petitioner)

Vs.

B.M.Gandhi Securities Pvt. Ltd. & Anr. ..Respondents.
(Orig.Respondents)

Ms.Sunanda Kumbhat, Advocate for the Appellant.

Mr.S.S.Purohit, Advocate for the Respondents.

CORAM: A.P.SHAH AND
S.J.VAZIFDAR, JJ.

DATED: 1ST FEBRUARY, 2005

ORAL JUDGMENT : (Per S.J. Vazifdar, J.)

By consent, the Appeal is disposed of finally at the admission stage.

2. The Appeal is against the order of the learned Single Judge dismissing the Appellant's Petition under section 34 of the Arbitration and Conciliation Act, 1996 for setting aside an award passed by the Appellate Bench, Arbitration Department, Stock Exchange, Mumbai, comprising of five arbitrators.

3. The arbitration proceedings were held before the sole Arbitrator under the Rules, Bye-laws and Regulations of the Stock Exchange, Mumbai. The Respondent was the Applicant and the Appellants were the Respondents. The Respondent, a share and stock broker of the Bombay Stock Exchange had made a claim against the Appellant who was its constituent at the relevant time. The Respondent sought to recover a sum of Rs.2,41,416.54 ps. with interest. The sole Arbitrator dismissed the Respondent's claim. The Respondent therefore filed an Appeal before the Appellate Bench of the Stock Exchange, Mumbai. The Appellate Bench set aside the order of the sole Arbitrator and allowed the Respondent's claim as prayed. The Appellant therefore filed the present Petition under section 34 of the Act.

4. The main contention urged before the learned Single Judge and before us was that the Appellate Tribunal did not permit the Appellant an opportunity of engaging a lawyer to represent him in the arbitration proceedings. The submission is unfounded and unfair to the Arbitral Tribunal.

5. We are in agreement with the learned counsel appearing on behalf of the Respondent that no

application for engaging an Advocate was in fact made by the Appellant to the Appellate Tribunal. Admittedly, there is no application in writing by the Appellant for the same. It is alleged however that the Appellant had orally requested the Appellate Tribunal to allow him to engage an Advocate. It is difficult to accept this case.

It is pertinent to note that even before the sole Arbitrator the Appellant appeared in person. He admittedly made no application for engaging an Advocate before the sole Arbitrator.

6. This was sought to be explained by stating that before the sole Arbitrator even the Respondents appeared in person and, therefore the Appellant did not think it necessary to engage an Advocate but that, before the Appellate Authority, the Respondent was represented by an Advocate and, therefore, the Appellant also decided to engage an Advocate and made an application for the same.

7. This is belied firstly by the fact that there was no such application in writing. More important is the fact that the impugned award of the Appellate Tribunal indicates that the Appellant had fully

argued his case before the Appellate Tribunal. The award does not indicate that the Appellant made any application for appointing an Advocate.

8. As at the first hearing before the Appellate Tribunal, on 4th February, 2004 the Appellate Tribunal observed that the Appellant had been attending the Arbitral proceedings regularly and, therefore, in the interest of justice it was only fair that notice to the Respondent be served once again. This direction was given as the Appellate Bench found that the record did not show conclusively that the notice for that day's hearing had been admittedly delivered to the Respondent as a result whereof he may not have remained absent. The Appellant admittedly received the notice of the next date of hearing well in advance. By his letter dated 10.2.2004 the Appellant acknowledged receipt of the proceedings before the Appellate Bench. It is pertinent to note that in this letter also there is no request for permission to appoint an Advocate on behalf of the Appellant. The challenge to the award on the above ground is therefore rejected.

9. The next contention urged on behalf of the Appellant was that the Appellate Tribunal did not

appreciate the facts and evidence correctly. The Appellate Bench held as under :

> "The advocates for the Appellant also strenuously objected to the findings given by the Learned Arbitrator of the Lower Bench for back dated entry and stated that it is not the case of the Respondent that a credit of Rs.44,700.90 has not accrued. The transfer of credit from NSE to BSE has not been disputed by the Respondent at any stage. In fact such transfer has resulted in lowering of the claim amount and has put Appellant in disadvantageous position. The journal entry for such transfer has been effected on 02/05/2000 for transactions executed in September, 2000 only due to human mistake. Even if one were to assume that the entry was deliberately passed back dated, its effect and consequence no way favours the Appellant. Therefore no adverse inference, resulting the total denial of claim deserves to be drawn as have been done by the Learned Arbitrator of the Lower Bench. It is nobody's case that transactions in settlement no.26 of 2000 leading to claim are not in existence. What is sought to be argued by the Respondent is that the transactions in losses should have been shifted to NSE in sister concerns account. The action/inaction on the part of Appellant broker cannot affect the claim in BSE for losses already incurred. Therefore, he vehemently argued that the award of the Lower Bench deserves to be set aside and claim amount be upheld."

10. It was submitted that this finding was contrary to the finding of the sole Arbitrator and is therefore clearly incorrect. With respect, we fail to see the logic of this argument. The Appellate Bench was not bound to accept the reasoning of the sole Arbitrator. There is nothing to suggest that the view taken by the Appellate Bench is wrong, patently erroneous or that it was not a possible view at all. The Appellate Bench has come to this conclusion on an appreciation of the evidence. In the circumstances, even assuming that we were to take a contrary view by agreeing with the sole Arbitrator, it would not be permissible for us to substitute our reasoning for that of the Appellate Bench. In fact and in any event, with great respect to the learned sole Arbitrator, the view taken by the Appellate Bench commends itself to us.

7. In the circumstances, the Appeal is dismissed. The Appellant shall pay the cost of this Appeal fixed at Rs.2,500/-.